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IN THE

Supreme Court of the United States

JOSEPH SCHEIDLER, ANDREW SCHOLBERG, TIMOTHY MURPHY, and THE PRO-LIFE ACTION LEAGUE, INC.,
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,
Respondents.

OPERATION RESCUE,
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICUS CURIAE* OF CONSISTENT LIFE, THE CATHOLIC-LABOR NETWORK, CITIZENS UNITED FOR ALTERNATIVES TO THE DEATH PENALTY, THE CONFERENCE OF MAJOR SUPERIORS OF MEN, INTERFAITH WORKER JUSTICE, THE LEADERSHIP CONFERENCE OF WOMEN RELIGIOUS, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, SOJOURNERS, DANIEL BERRIGIAN, WILL DAVIS CAMPBELL, CAROL CROSSED, THOMAS GUMBLETON, KATHY KELLY, RACHEL MACNAIR, HELEN PREJEAN, MARTIN SHEEN, HOWARD ZINN, STEPHEN ZUNES *ET AL* IN SUPPORT OF PETITIONERS

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BRIEF *AMICUS CURIAE* OF CONSISTENT LIFE, *et al.*

INTEREST OF *AMICI CURIAE*

Amici [1] are civil rights organizations, environmentalists, animal protection advocates, political groups, groups supporting organized labor, voluntary associations or persons who (1) are committed to principles of nonviolent direct action on a wide range of social issues, (2) do not condone the use of violence as a legitimate form of social protest, and (3) do not necessarily agree with the substantive views of the petitioners about abortion (some do, some don't, and some take no position).

Each of these aspects about the *amici* merits further elaboration. On the first and second points, we repeat that we do not engage in violence or encourage others to do so. Although *amici* are aware that allegations of violence of varying degrees have arisen in this litigation, we do not condone such violence in any way, but participate in this brief due to our deep concerns over the legal issues that have arisen.

The lead organization—Consistent Life—is a network that promotes a consistent life ethic, focusing on connections among many issues concerning human life, including war, abortion, poverty, racism, the death penalty and euthanasia, and repudiates all forms of violence. Some of the *amici* organizations focus their energies on one or another issue without taking a stand on all other issues. For example, Citizens United for Alternatives to the Death Penalty focuses on capital punishment and does not have an official policy on animal rights. People for the Ethical Treatment of Animals focuses on the view that "animals are not ours to eat, wear, experiment on, or use for entertainment," but does not espouse a view about the death penalty.

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[1] Pursuant to Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

On the third point it is enough to say that although some of us disagree strongly with the substantive views of the petitioners about abortion or with the methods they employed in the 1980s to demonstrate their opposition to abortion, all of us disagree with the respondents' litigation strategy of reliance upon civil RICO against civil protesters. *Amici* are interested in a prompt disposition of this case because the misapplication of the federal Racketeer Influenced and Corrupt Organizations Act [RICO] exposes us to enterprise liability with staggering penalties (treble damages, attorney fees, nationwide injunctions of long duration) whenever two of more *supporters* of any of the organizational *amici* (who need not be members of the sponsoring body or community) act in a manner deemed by a federal judge to constitute "acts or threats of physical violence to any person or property." Pet. App. 28a.

The lower court's misreading of the Hobbs Act places all social protesters in grave financial jeopardy if any of their supporters engage in conduct vaguely defined as a "threat to property affecting interstate commerce." Judicial imposition of vicarious liability because of the acts of loosely connected supporters of various causes is at odds with the text of both the Hobbs Act and RICO, the history surrounding the adoption of these statutes, and the broader social history of uninhibited protest in this country.

The novel reading of the Hobbs Act offered by the court of appeals—that the statute does not require any proof of either robbery or extortion, the two crimes specified in the Hobbs Act—represents a profound threat to Americans who love this country enough to want to change social policies they deem to fall short of the capacity of our society for human compassion and social justice.

SUMMARY OF ARGUMENT

Judicial imposition of vicarious liability because of the acts of loosely connected supporters of various causes is at odds with the *text* of both the Hobbs Act, 18 U.S.C. § 1951(a), and

the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, and the *legislative history* surrounding the adoption of these statutes. Neither statute should be misused against political and labor protesters.

The misreading of the Hobbs Act by the court of appeals—effectively rewriting the statute to delete the two crimes specified in the text, *robbery* and *extortion*—places all social protesters in grave financial jeopardy if any of their supporters engage in conduct vaguely defined as a "threat to property affecting interstate commerce." This unfounded interpretation is wrong for another reason: it leaves the statute sounding like the federalization of the crime of *coercion*, which is precisely what Congress chose *not* to do when it enacted the Hobbs Act.

In addition to being wrong in its reading of the Hobbs Act, the court of appeals was also wrong in applying RICO to civil protesters, a result never intended by Congress. The Court need not review the entire legislative history of RICO to search for isolated sentences in a committee report or a floor debate. It is enough to look carefully at the *text of the statute*, and compare it with the preexisting bill to recognize that the law signed by President Nixon by no means sought to sweep civil protesters within its scope.

The broader *social history* of uninhibited protest in this country confirms this view of the Hobbs Act and RICO as well. This history confirms that the People retain the right to engage in vigorous protest against a wide variety of governmental policies, and in a variety of forms of direct action, including leafleting, demonstrations, picketing, sit-downs, sit-ins, and boycotts. Real struggles in our past could have had a very different outcome if the novel interpretation of the Hobbs Act and RICO had been around when these events occurred.

The reading of the Hobbs Act offered by the court of appeals represents a profound threat to Americans who love this country well enough to confront social policies they

deem to fall far short of the capacity of our society for human compassion and social justice.

ARGUMENT

I. The Hobbs Act and RICO should not be misused against civil rights protesters by their political adversaries.

A. "Uninhibited, robust and wide open" speech on public issues leads frequently to many forms of protected communicative activity, including leafleting, picketing, demonstrations, sit-downs, sit-ins, and boycotts.

After nearly two decades of litigation related to one of the most contentious issues in our society, the parties before the Court might be imagined to share little common ground. But the truth is that they share much in common. The abortion issue that divides them is a profound disagreement, one that both sides take with great seriousness. The three points we discuss below are all profound truths, and we think it significant that petitioners and respondents agree about these truths. Hence, before turning to matters in contention, we emphasize at the outset the things that unite the petitioners and respondents.

First, both parties believe that *the life of the mind cannot be stifled or controlled by politicians*. For example, NOW argued in a brief *amicus curiae* filed in this Court in *NAACP v. Claiborne Hardware*, 458 U.S. 886 (1982): "Protection of Political Speech and Association Is Central to the First Amendment." O.T. 1981, No. 81-202, Brief *Amici Curiae* of the American Civil Liberties Union and the National Organization for Women, (hereafter: "NOW *Amicus* Brief in *Claiborne Hardware*"), 1981 WL 390220. We offer two examples from American history of the illusory character of any system of attempted thought control. First, King George III and his Parliament could not satisfy the yearning of the American colonists for self-governance by telling them that they should be content with the idea of "virtual representation," or that they should put all thought of rebellion out of their mind. From the period of the Stamp Act to the founding of the republic, our colonial forebears understood that taxation without representation is tyranny, and when the time came to declare their independence from the mother country, they stated candid reasons that impelled them to the separation, producing the most famous list of grievances in the eighteenth century, the Declaration of Independence. 1 Stat. 1 (1776). Second, the men who governed this country from the dawn of the republic were equally unpersuasive when they told women that they should be satisfied with the political arrangements in this country at the outset because the men provided "virtual representation" for the women. If women were content with this way of thinking, they would still not be voting or serving in public office or on this Court or on juries throughout the land. The reality is that from the founding period to the present, women have known that virtual representation" of women by men is as illegitimate as virtual representation of the colonists by their imperial superiors in Westminster. And when in 1848 American women organized collectively to share their convictions about their experience as a colonized people, they articulated the most famous nineteenth-century list of women's grievances known as the Declaration of Sentiments of Seneca Falls. Both of these examples illustrate that thought cannot be controlled. The life of the mind cannot be contained. Freedom of speech matters. Both petitioners and respondents subscribe to these fundamental propositions about civil liberty.

Second, both sides agree that *it is not enough to protect only the life of the mind, or only "pure speech."* Ideas have consequences. They can trouble people's consciences, awaken an awareness, and become a clarion call to action. Hence it is not enough in a free republic that ideas alone or "pure speech" alone must be protected. It is also necessary to protect communicative action. The text of the First Amendment itself acknowledges this by expressly securing the

natural right of the people not only to freedom of speech, but also freedom to assemble peaceably. The same amendment protects the free *exercise* of religion, which James Madison understood to be profoundly different from mere toleration of the theological ideas of dissenters. *See, e.g.*, John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom* (1998). Just as this Court has overcome the false start in earlier free exercise cases that divided religious belief and action too categorically, *compare* e.g., *Reynolds v. United States*, 98 U.S. 145 (1879), with *Sherbert v. Verner,* 374 U.S. 398 (1963), so too it has clarified in a host of cases that the Free Speech Clause protects not only utterance itself, but also a wide variety of communicative acts, such as leafleting, picketing, demonstrations, sit-downs, sit-ins, and boycotts. *See, e.g., Hague v. CIO,* 307 U.S. 496 (1939); *Terminiello v. City of Chicago,* 337 U.S. 1 (1949); *Niemotko v. Maryland*, 340 U.S. 268 (1951); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969).

Third, both sides not only agree with these ideas. They *both put these ideas into practice regularly*. For example, NOW testifies regularly before Congress and State legislatures on issues important to its constituents, and has for decades engaged in a variety of public expressive acts such as marches, demonstrations, and boycotts. While the Equal Rights Amendment was pending, NOW organized a nationwide boycott involving several hundred church groups, professional associations, women's organizations, and civil rights groups that agreed not to hold their meetings or conventions in states that had not ratified the proposed amendment. Two state attorneys general sued NOW, seeking declaratory and injunctive relief against the organization for its role in promoting the "ERA boycott." NOW successfully defended the right to engage in such activity. *Missouri v. National Organization for Women*, 620 F.2d 1301 (C.A. 8 1980), *cert. denied*, 449 U.S. 842 (1980). Similarly, the petitioners are not content to leave their ideas about abortion at a purely theoreti-

cal level, but take their convictions to the public through participating in an annual march and demonstration on January 22, the anniversary of this Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973). And in the early 1980s they formed the "Pro-Life Action Network" (PLAN), a loosely organized coalition of persons, many of whom participated in the demonstrations in front of abortion clinics that are the underlying subject of this litigation.

Like petitioners and respondents, *amici* are divided over the abortion issue. Like them, we are in complete agreement with one another and with the parties about the three points discussed above. We could find no better way to underscore this accord than by stating our agreement with the following propositions articulated by NOW as the headings in the *amicus* brief that it submitted to this Court in *NAACP v. Claiborne Hardware*, 458 U.S. 886 (1982):

I. A Civil Rights Boycott Is At the Core of First Amendment Protection.

A. A Civil Rights Boycott Is A Form of Political Speech and Association.

B. Protection of Political Speech and Association Is Central to the First Amendment.

II. Civil Rights Boycotts Should Not Be Judged as Common Law Conspiracies.

A. Imposing Liability On An Individual Solely Because of Political Association With Others Violates the First Amendment.

B. An Injunction That Prohibits Advocacy and Picketing Is An Impermissible Prior Restraint and An Unconstitutionally Overbroad, Content-Based Restriction on Speech.

C. The *Meadowmoor* Case No Longer Expresses a Constitutionally Viable Principle.

III. Illegal Conduct By Boycott Participants Can Be Controlled Under Traditional Common-Law Principles of Personal Responsibility Without Employing The Conspiracy Doctrine.

IV. Limiting the Power of A State To Suppress Civil Rights Boycotts Is Not Inconsistent With the Principle That Federal Civil Rights Laws and Remedies Should Be Broadly Construed.

NOW *Amicus* Brief in *Claiborne Hardware*, 1981 WL 390220.

From our perspective as activists on a host of contentious issues in America, these principles articulated by NOW in 1981 seem preferable to the strategies later adopted by the respondents in this litigation with the petitioners.

Finally, we are acutely aware that this case involves allegations of violence. We have already indicated our views on this matter in the statement of interest, and several *amici* do so with greater specificity in their statements in Appendix A. But it bears repetition that *amici* are united in our commitment to principles of nonviolent direct action on a wide range of social issues and in our resolve not to encourage or condone the use of violence as a legitimate form of social protest.

We take this moral stand for two reasons. First, we realize that direct action is often necessary to awaken the conscience of the nation to injustice within our society. For example, the abolitionists did so for three decades prior to the Civil War. Women were a prominent part of that movement, and had to sustain their own movement of direct action to awaken our country to the injustice of excluding women from voice or vote. Even though emancipated, African Americans endured a brutal pattern of systematic discrimination in housing, employment, schooling, and the franchise; and they undertook a massive campaign of direct action to overcome these injustices. Even enfranchised, women were still subjected to unequal treatment in the laws and policies of the nation; and they undertook a massive campaign of direct action to overcome these injustices.

Second, we have been shaped by the commitment to Gandhian nonviolence preached and practiced by Dr. Martin

Luther King, Jr., the principal leader of the movement to end legalized apartheid in this country. Some of the *amici* are civil rights activists from that era. For example, Will Davis Campbell was a founding member of Dr. King's Southern Christian Leadership Conference; Dr. Campbell served as the Executive Director of the Committee for Southern Churchmen, now known as Witnesses for Reconciliation. Others bore the brunt of the violence of arch-segregationists like Bull Connor and Governors George Corey Wallace and Orval Faubus. These heroes of the civil rights movement sang "We shall overcome," and they did overcome the violence of racism by nonviolence.

B. First Amendment concerns about the demonstrations at issue in this case require the "precision of regulation" mandated in *Claiborne Hardware* (1982), not the sweeping national injunction authorized under *Milk Wagon Drivers* (1941).

The general commitment to nonviolence referred to above in Part I.A did not guarantee there never were any instances in which civil rights protesters threatened violence or resorted to it. On the contrary, that very fact pattern was the subject of a ruling by this Court that is highly relevant to this case, *NAACP v. Claiborne Hardware,* 458 U.S. 886 (1982). These were the facts. In 1966, a branch of the NAACP in Claiborne County, Mississippi, launched a boycott of local white merchants "to secure compliance by both civic and business leaders with a lengthy list of demands for equality and racial justice." *Id.* at 907. The record in this case contains abundant evidence of pure speech ("encouraging nonparticipants to join the common cause") and clearly protected activity ("nonviolent picketing"). The complexity of the case is reflected in clear evidence that fear of reprisals caused some black citizens to withhold their patronage from the boycotted businesses. This led the state supreme court to rule that the entire boycott was unlawful and

that each of the named defendants was liable for all of its economic consequences. *Id.* at 888.

This Court was persuaded that the critical factors in the boycott's success were "persuasive rhetoric, determination to remedy past injustices, and a host of voluntary decisions by free citizens." *Id.* As to the violence in the record, Justice Stevens noted: "Although the extent and significance of the violence in this case are vigorously disputed by the parties, there is no question that acts of violence occurred. No federal rule of law restricts a State from imposing tort liability for business losses that are caused by violence and by threats of violence." *Id.* at 916.

Thus, *Claiborne Hardware* states clearly that violence is not constitutionally protected. None of the *amici* claims that violence in protesting abortion or any other issue on which we sometimes take to the street in protest is constitutionally protected. On the contrary, we go further than the constitutional distinctions and declare unambiguously that *violence against women seeking an abortion or those providing them is itself morally repugnant to us*, an offense we do not condone. But the principal focus of our concern in this litigation is that the legal tool selected by respondents—civil RICO (conspiracy theory writ large)—is problematic for all protesters of all stripes on issues of all sorts, especially as this statute has been construed by the court of appeals to lack any requirement of proof of either robbery or extortion.

Hence we return to *Claiborne Hardware*, noting important factual parallels between that precedent and the instant case. First, although the parties in both cases disputed the extent and significance of the violence, there is no question in either case that acts of violence occurred. *Id.* at 916. Second, in both cases, the record does not reflect a *pervasive* pattern of violent acts, but relatively few instances of violence amidst a pattern of predominantly nonviolent protected activity. *Id.* at 923. Third, precisely because in both cases sporadic acts of violence were situated within a broader context of pure

speech and clearly protected activity, both cases require rigorous "precision of regulation." As Justice Stevens clarified: "the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability and on the persons who may be held accountable for those damages." *Id.* at 916-917; *see also Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 184 (1968). Hence the Court set clear limits on the imposition of derivative or enterprise liability upon an entire group for the conduct of some members who might have engaged in illegal tactics unauthorized by the organization, while most of the membership remained truly innocent of any illegal acts committed by the organization. *Id.* at 930-932.

At the urging of the respondents, the district court rejected *Claiborne Hardware* as the precedent to follow, and relied instead on an earlier precedent, *Milk Wagon Drivers v. Meadowmoor Dairies*, 312 U.S. 287 (1941). No. 04-1244, 127a-128a. The court of appeals considered *Claiborne Hardware* in passing, *see* No. 04-1444, Pet. App. 48a-49, but the logic of its holding is contrary to this precedent.

The very styling of the 1941 case suffices as a clue that something curious was happening in the selection of which precedent to honor. Milk has not been delivered to homes by wagon drivers in a very long while. It was only *after 1941* that this Court clarified in a host of important decisions that concerted activity such as picketing, sit-downs, and boycotts are protected activity not subject to state injunctions. *See, e.g., AFL v. Swing*, 312 U.S. 321 (1941) (state court injunction against picketing reversed; *Milk Wagon Drivers* distinguished); *Cafeteria Employees Union Local 302 v. Angelos*, 320 U.S. 293 (1943) (state court injunction against picketing reversed; *Milk Wagon Drivers* distinguished); *Teamsters Local 796 v. Newell*, 356 U.S. 341 (1958) (state court injunction against picketing and boycotts issued in reliance upon *Milk Wagon Drivers* reversed *per curiam*); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957) (state court injunction against pick-

eting reversed; *Milk Wagon Drivers* distinguished); *Carroll v. Princess Anne, supra* (state court injunction against rallies issued in reliance upon *Milk Wagon Drivers* reversed). By the simple device of electing to "follow" *Milk Wagon Drivers*, the lower courts could proceed apace to ignore all of this Court's teaching in the four decades between the precedents, including cases at the height of the civil rights movement, *see, e.g., Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), and 382 U.S. 87 (1965), and cases involving trespass by sit-down protesters at segregated lunch counters, *Garner v. Louisiana*, 368 U.S. 157, 185, 201-207 (1961) (Harlan, J. concurring). *See* NOW *Amicus* Brief in *Claiborne Hardware*, 1981 WL 390220, at 19-21.

The most significant reason to distinguish *Milk Wagon Drivers* and *Claiborne Hardware* is not the year in which the Court decided these cases, or even the many subsequent cases in which this Court declined to follow *Milk Wagon Drivers*. It is the profoundly different circumstances or facts in each record. Thus, in *Claiborne Hardware* Justice Stevens distinguished *Milk Wagon Drivers* by citing the following facts from the record in the 1941 case:

> Witnesses testified to more than fifty instances of windowsmashing; explosive bombs caused substantial injury to the plants of Meadowmoor and another dairy using the vendor system and to five stores; stench bombs were dropped in five stores; three trucks of vendors were wrecked, seriously injuring one driver, and another was driven into a river; a store was set on fire and in large measure ruined; two trucks of vendors were burned; a storekeeper and a truck driver were severely beaten; workers at a dairy which, like Meadowmoor, used the vendor system were held with guns and severely beaten about the head while being told 'to join the union'; carloads of men followed vendors' trucks, threatening the drivers, and in one instance shot at the truck and driver. *Claiborne Hardware*, 458 U.S. at 923, citing *Milk Wagon Drivers*, 312 U.S., at 291-292.

Nothing of the magnitude of this level of violent crime can be found in the record of *Claiborne Hardware* or the *Scheidler* case. We repeat, the fact that there is any violence at all in the context of an abortion protest is something that *amici* find morally abhorrent. But, to return to constitutional analysis, we examine the record in this case soberly and find nothing remotely approximating the level of pervasive violence in *Milk Wagon Drivers*.

A corollary of this point is that "insubstantial findings of fact" will not suffice to defeat any constitutional freedom, let alone "the guarantees of the Bill of Rights." *Milk Wagon Drivers*, 312 U.S. at 292. In both *Claiborne Hardware* and the instant case the only evidence of violence refers to a few isolated acts of violence during a limited period in the long years under review. In *Milk Wagon Drivers*, by contrast, there was overwhelming testimony of a much more serious pattern of criminal activity.

In the light of these considerations, can one seriously claim in 2005 that *Milk Wagon Dairies* continues to express a constitutionally viable principle after *Claiborne Hardware*? It is instructive that NOW argued persuasively to the contrary in the *amicus* brief that it filed in this Court in *Claiborne Hardware* "The [*Milk Wagon Drivers v.*] *Meadowmoor* Case No Longer Expresses a Constitutionally Viable Principle." NOW *Amicus* Brief in *Claiborne Hardware*, 1981 WL 390220 at 19. The Court, of course, has ready access to this brief, both in the Library of the Court and on line, 1981 WL 390220. But we include a few samples of its solid reasoning here. For example, NOW argued in its brief: "[*Milk Wagon Drivers*] was decided before the Court had developed the First Amendment principles on which we and the petitioners rely. The Court's holding is, as we urge here, inconsistent with fundamental constitutional principles." *Id.* at 20. "[*Milk Wagon Drivers v.*] *Meadowmoor* no longer reflects current interpretation of the protection to be afforded First Amendment rights, and we urge that it be overruled." *Id.* at 22. We

agree. NOW correctly grasped the complexity of hybrid cases in which protected and unprotected activity coincide in a single record. The principle that NOW articulated in its *amicus* brief in *Claiborne Hardware* is no less valid today, and no less valid in this very case.

At this stage of the lengthy proceedings, the court of appeals has suggested a remand to the district court to ponder four free-floating acts of violence that the court of appeals thinks merit further reflection—though not further fact-finding—by the district court. Pet. App. 2a-6a. This conclusion flies in the face of the clear mandate of this Court in *Scheidler v. NOW*, 537 U.S. 393 (2003) (*Scheidler II*): "Because all of the predicate acts supporting the jury's finding of a RICO violation must be reversed, the judgment that petitioners violated RICO must also be reversed. Without an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." 537 U.S. at 411.

Since the court of appeals acknowledged that *Claiborne Hardware* is the more fitting precedent to follow in the *Scheidler* case, Pet. App. 48a, *amici* focus only on whether the lower court actually achieved the "precision of regulation" that *Claiborne Hardware* requires. *Claiborne Hardware* repeatedly states that it is not permissible to identify a few acts or threats of violence, and then assign liability for these acts to people who did not commit them. *See e.g.*, 458 U.S. at 916-917 (presence of protected activity imposes restraints on the grounds that may give rise to liability for damages and on the persons who may be held accountable for those damages); *id.* at 924 (attendance and participation at meetings of civil rights organizations an insufficient basis upon which to impose liability for certain violent acts engaged in by some persons participating in the boycott where no illegal conduct was authorized, ratified, or discussed at any of those meetings); *id.* at 925 (guilt by association is impermissible basis for assigning liability); *id.* at 930-932 (limits on the imposition of derivative or enterprise liability upon an entire group for conduct of

some members who might have engaged in illegal tactics unauthorized by the organization, while most of the membership remained truly innocent of any illegal acts committed by the organization).

The lower courts did not come close to "precision of regulation." For example, the court of appeals sustained the decision of the district court allowing plaintiffs-respondents to introduce before the jury evidence about the conduct of *persons never identified in the trial*. Whoever these parties were, their acts against various abortion providers, Tr. 685, 687, 723, 1148, 1486, 2147-50, over the fourteen years from 1984 to trial were most emphatically *not* the acts of any of the named petitioners. Once one tries to achieve "precision of regulation," serious questions present themselves. Is there *any evidence in this vast record linking any of the named petitioners to any act of coercion or violence*? If there is no reliable factual basis for determining *precisely who* committed those acts of violence or threats of violence that the court of appeals wants the district to think about, how can a court fashion an equitable remedy?

The answer to these questions surely cannot be that the petitioners hung out with one another, for this Court has repeatedly rejected the idea of guilt by association. *See, e.g.*, *Healy v. James*, 408 U.S. 169, 185-186 (1972) the Court (state university may not deny recognition to local student group merely because of affiliation with national organization associated with disruptive and violent campus activity).

In *Claiborne Hardware*, Justice Stevens cited both *Healy*, 408 U.S. at 186, and *United States v. Robel*, 389 U.S. 258, 265 (1967) for the proposition that "'guilt by association alone, without [establishing] that an individual's association poses the threat feared by the Government,' is an impermissible basis upon which to deny First Amendment rights. The government has the burden of establishing a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims." 458 U.S. at

919-920. Analogously, the plaintiff in a civil RICO case has a similar burden. In this litigation respondents did not even attempt to establish specific intent by any specific person to further illegal aims. Contrast this litigation behavior with the convictions of NOW set forth in its *amicus* brief in *Claiborne Hardware*: "Imposing Liability On An Individual Solely Because of Political Association With Others Violates the First Amendment." NOW *Amicus* Brief in *Claiborne Hardware*, 1981 WL 390220, at 12-15.

For these reasons alone, the court of appeals should be reversed. But there are other reasons for reversing the court of appeals that arise from its misreading of both the Hobbs Act and of RICO itself.

C. The practical effect of the interpretation of the Hobbs Act by the court of appeals is to sideline or trivialize the very crimes—robbery and extortion—that Congress deliberately inserted into the statute, and to federalize the very crime—coercion—that Congress deliberately excluded from the statute.

At the conclusion of the trial in this case in 1999, the district court entered judgment for the respondents and shortly thereafter entered a nationwide permanent injunction regulating petitioners' future protest activities at abortion clinics. No 04-1244, Pet. App., 141a-174a. The court of appeals affirmed "in all respects." *Id.* at 61a.

This Court reversed, concluding its opinion on February 26, 2003 with three clear commands: (1) "all of the predicate acts supporting the jury's finding of a RICO violation must be reversed," (2) "the judgment that petitioners violated RICO must also be reversed," and (3) "[w]ithout an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." *Id.* at 411. Those three commands are, of course inter-related. Without *any* predicate acts, the RICO judgment had to fall. And without a final judgment favoring the respondents, the injunction had to be vacated.

See e.g., Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 546, n. 12 (1987).

For these reasons *amici* imagined that the case was over, but we underestimated the capacity of lawyers and judges to extend the life of a case. After pondering the case for a full year, the court of appeals issued an unpublished order remanding the case to the district court to determine whether four unspecified "acts or threats of physical violence to any person or property" are sufficient to support the nationwide injunction it imposed in 1999. No. 04-1244, Pet. App. 25a-29a.

In defending this result, the court of appeals not only ignored this Court's clear mandate, but also indulged more in statutory amendment than in statutory interpretation. The text of the Hobbs Act adopted in 1946 clearly links the federal violation with the common law crimes of robbery and extortion. Section 2 provides: "Whoever in any way or degree obstructs, delays, or affects commerce, or the movement of any article or commodity in commerce, *by robbery or extortion*, shall be guilty of a felony." Section 5 provides: "Whoever commits or threatens physical violence to any person or property in furtherance of a plan or purpose *to do anything in violation of section 2* shall be guilty of a felony." Pub. L. No. 486, 60 Stat. 420 (1946) (emphasis added).

This case has never involved any allegation of robbery, for none of the anti-abortion protesters ever *stole* any property from any of the clinics at which they engaged in sit-ins. And the law of the case determined by this Court in *Scheidler v. NOW*, 537 U.S. 393 (2003) (*Scheidler II*), is that this case no longer involves any contention about extortion, for none of the anti-abortion protesters ever *obtained by force or violence* any property from any of the clinics at which they staged protests. Since the two crimes expressly mentioned in the Hobbs Act have no relevance to this case, the Court's concluding paragraph was ineluctable: "Because *all of the predicate acts supporting the jury's finding of a RICO violation*

must be reversed, the judgment that petitioners violated RICO must also be reversed." *Scheidler II*, 537 U.S., at 411 (emphasis added), No. 04-1352, Pet App. 48a.

Nevertheless, on remand the court of appeals held the case for a full year—a long time to ponder a clear mandate—and then took another full year to rule on the petition for rehearing. What emerged from all this judicial deliberation was not the birth of a new legal vision of the relationship of federal and state crimes, nor even a bold statement of how the Hobbs Act must be sensibly construed, but only a meek, iffy supposition that "it is *not beyond the realm of possibility* that the revisers *may have made* certain substantive changes, either advertently or inadvertently."[2] No. 04-1244, Pet. App. 15a.

After all this waiting, the court of appeals directed the district court to consider a novel view of the Hobbs Act that had been rejected by all other circuits that have considered it. *See* No. 04-1244, Pet. 18-22. Judge Wood wrote: "it would be imprudent to resolve this problem of statutory interpretation at this stage" and she elected instead to follow "for reasons of judicial economy and restraint . . . a wait-and-see approach." No. 04-1244, Pet. App., 6a-7a, 15a-16a. "Imprudent"? It is not imprudent; it is impertinent for a lower court to ignore the mandate of this Court. "Judicial economy"? The court of appeals wasted judicial resources by prolonging a case that this Court ended over two years ago. "Restraint"? The court of appeals was unrestrained in page after page attacking the sensible view of the Hobbs Act offered by the petitioners in their briefs below. "Wait-and-see"? This is not a case about the rule against perpetuities; it is a case that misapplies RICO to social protesters.

At the end of the day the court of appeals offered a view of the Hobbs Act that is a mirror image of what Congress enacted. First, Congress expressly *excluded* the crime of *coercion* from the Hobbs Act in 1946, and the court of appeals has effectively read that crime back into the Hobbs Act by suggesting that the statute punishes a free-floating crime of threatening a person engaged in interstate commerce, which sounds pretty much like the crime of *coercion*. Second, Congress expressly *included robbery* and *extortion* in the Hobbs Acts, and the court of appeals rewrote the statute by effectively striking from the statute's "violence provision" any connection to the two crimes that Congress decided to punish as a federal offense. To achieve this remarkable feat of statutory interpretation, the court of appeals simply ignored this Court's clear teaching on this very matter in *Scheidler II*, 537 U.S. at 405. Even more boldly, the court of appeals ignored the clear mandate of this Court in *Scheidler II, id.* at 411, as well as the concerns of Justices Ginsburg and Breyer about the expansive use of RICO, *id.* at 411-12 (Ginsburg, J., concurring).

[2] In the *Ars Poetica*, the ancient Roman poet Horace wrote: "Parturient montes, et nascitur ridiculus mus." ("The mountains are in labor, and a ridiculous mouse is born.")

D. Congress never intended RICO to apply to civil protesters.

In addition to being wrong in its reading of the Hobbs Act, the court of appeals was wrong in applying RICO to civil protesters, a result never intended by Congress. This Court need not review the entire legislative history of RICO to search for isolated sentences in a committee report or a floor debate. It is enough to look carefully at the *text of the statute*, and compare it with the preexisting bill to recognize that the law signed by President Nixon by no means sought to sweep civil protesters within its scope. In 1969 the bill that would eventually become RICO defined "racketeering activity" very broadly to include "any act involving the danger of violence to life, limb or property, indictable under State or Federal law and punishable by imprisonment for more than one year." S. 1861, 91st Cong., Section 2(a) (1969). *see also* 115 Cong. Rec. 9569 (1969). Several objected to this language. Note that

this language is very close to the crime of coercion, which Congress had not federalized from the Hobbs Act in 1946.

Several Members of Congress, including Senators Edward Kennedy and Philip Hart complained that the bill reached beyond "organized crime." S. Rep. No. 91-617, at 215 (1969). The American Civil Liberties Union also opposed the bill, expressing the concern that social and political protesters might fall within the bill's ambit. The ACLU found the breadth of the original definition of racketeering activity "particularly troublesome," citing the anti-war demonstrations at the Pentagon and at Columbia University. *Measures Relating to Organized Crime: Hearings on S.30 and Related Measures Before the Subcomm. on Crim. Laws and Proc. of the Senate Comm. on the Judiciary*, 91st Cong. 475-76 (1969). The ACLU feared that this version of the bill would be used by the Nixon Administration to suppress anti-Vietnam war dissent. The Department of Justice also objected to the sweeping definition of "racketeering activity" in the bill, arguing that it was "too broad and would result in a large number of unintended applications." S. Rep. No. 91-617, at 121-22. Deputy Attorney General Richard G. Kleindienst suggested an amendment to narrow the definition to a list of specific offenses "customarily invoked against organized crime." *Id.* at 158.

In response to these misgivings, the Senate Judiciary Committee eliminated the broad language defining "racketeering activity" as "danger of violence to life, limb or property," and replaced it with a list of specifically designated federal and state offenses, such as the Hobbs Act. The new language was virtually identical to that recommended by the Justice Department. The Senate adopted the revised bill by a vote of seventy-three to one. 116 Cong. Rec. 972 (1970). The House then made minor amendments with which the Senate concurred. *Id.* at 36,296. President Nixon signed the bill into law on October 15, 1970. *See* Brian Murray, "Protesters, Extortion, and Coercion: Preventing RICO from Chilling First

Amendment Freedoms," 75 NOTRE DAME L. REV. 691, 697 & n.21 (1999).

As noted above with respect to the Hobbs Act, one of the objectionable features of the opinions of the court of appeals on remand is that three unelected judges have, in effect, assumed functions better left for Congress to undertake. The court of appeals on remand effectively reinstated the arguably unconstitutional broader version of the RICO bill that the Senate expressly rejected. Congress emphatically did not intend RICO to be used as a bludgeon against social protesters, as the lower courts have done not only in this case, but also in other cases directly affecting some of the *amici*. The Court should reinstate a sensible construction of RICO.

II. The interpretation of the Hobbs Act by the court of appeals is irreconcilable with the structure of the United States Constitution and with American constitutional history.

A. We, the People, retain the right to engage in vigorous protest against governmental policies.

The structure of our constitutional order is highly relevant to the proceedings in this case. We, the People ordain and establish the Constitution of the United States. The First Amendment is a mirror image of Article I, §8. In Article I the People confer legislative power upon Congress. In Amendment I the People deny to Congress (and by implication to the Executive and the Judiciary) any power or jurisdiction to establish religion or prohibit its free exercise, or abridge the People's freedom of speech or of the press; or the right of the People peaceably to assemble, and to petition the Government for a redress of grievances.

In times of crisis, the People rather than governmental officials (arresting officers, angry mayors or governors or legislators, even judges who have from time to time yielded to the passion of the day), have often been the moral compass of society. Law has not always been an instrument of establishing justice, but has also become a means of coerced injustice.

Slavery is the most obvious example that was overcome not by the political branches nor by the decisions of this Court, but by a massive popular upheaval sustained for nearly three decades (1830-1860) before the political branches began to respond to the demands of the People to end this inequity. And it took another century after the eradication of slavery to put an end to Jim Crow segregation that made a mockery of this country's commitment to "equal protection of the laws." Again massive popular civil protest—led by African Americans—against the injustice of these laws was the vehicle for the Civil Rights Laws of the 1960s that were the direct fruit of the civil rights movements.

The original Constitution excluded women from full citizenship by denying them the franchise as well as public obligations such as service on juries; and by virtue of laws enacted by all-male legislatures and enforced by all-male courts, the subjugation of women to men lasted throughout the majority of this country's history. As with the civil rights movements, it took two massive popular movements—both led by women—in both the nineteenth and the twentieth centuries to overcome these inequalities. *Amici* note with gratitude the role that respondent National Organization for Women played in helping, prodding when necessary, our society to move in the direction of equal dignity for men and women.

Abortion still divides our country decades after *Roe v. Wade*, 410 U.S. 113 (1973). So is this Court divided, even as it attempts to shore up its own major precedent. *See Planned Parenthood v. Casey*, 505 U.S. 832 (1992) (reaffirming *Roe*). Indeed, some members of this Court have dared to suggest that a significant cause for popular unrest over this issue is the Court's withdrawal of the issue from the political forum where common ground might be sought among contending parties. For example, Justice White wrote: "The upshot is that the people and the legislatures of the 50 States are constitutionally disentitled to weigh the relative importance of the

continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the mother, on the other hand." *Roe v. Wade*, 410 U.S. at 221 (1973) (White J., dissenting). *See also* Comments of [then Circuit Judge] Ruth Bader Ginsburg, New York University Law School, 1992.

Amici cannot in this brief suggest a simple way out of the country's anguish over abortion, for we are divided on this issue ourselves. It is equally true that all the *amici* are united in rejecting the solution to this issue represented by this litigation as it has meandered through numerous legal theories—including the view that anti-abortion demonstrators represented a conspiracy in restraint of trade in violation of the Sherman Act, or that petitioners could be linked with deeply disturbing crimes such as intentional murder of doctors who provide abortions or with arson perpetrated at abortion clinics, even though there was no evidence linking any of the defendants (petitioners here) to these crimes, which *amici* repudiate with unanimity and full vigor. In its latter stage, the case has rested upon the federal racketeering law, the application of which to social protesters is a result that Congress never intended when it enacted RICO, and that is nowhere to be found in the statute signed by President Nixon in 1970. *See* Part I.D, above.

This Court has attempted to shed light on RICO twice already. We had thought the second time was the *denouement* of this litigation, since the Court concluded its 8-1 opinion with such a clear mandate: "Because all of the predicate acts supporting the jury's finding of a RICO violation must be reversed, the judgment that petitioners violated RICO must also be reversed. Without an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." *Scheidler II*, 537 U.S. at 411.

We hope that this case has now come to its final act. But we are compelled to state that after all these years the case has taken a turn for the worse, when it was difficult for us to

imagine that it was possible after this Court's resolution of the issue of reversing the judgment and vacating the injunction in *Scheidler II*.

That this case has gone on so long is another indicator that something has gone wrong with RICO. As we noted above in Part I.D, Congress did not have people like the petitioners in mind when it enacted RICO. Not to put too fine a point on the matter, we imagine that Congress was taking aim at, well, "racketeer influenced" and highly organized, if thoroughly "corrupt organizations." But to *amici*, most of whom engage regularly in civil protest on a wide variety of issues, and who—like the petitioners—do so in a fairly unorganized and spontaneous way, we think the application of RICO to social protesters is a profound mistake.

Why is the mistake a profound one? We return to the most fundamental truth about our constitutional order stated above: that that People retain the natural rights articulated in the First Amendment, and efforts to stifle these differing points of view—sometimes radically differing—are in the long run fruitless. Worse yet, the involvement of the judiciary in one legal theory after another to wear down the meager resources of civil protesters is itself problematical.

B. The lower court's view of the Hobbs Act and RICO is irreconcilable with the long history of social protest in this country.

People have frequently protested the moral flaws of the law, whether enacted by the people's representatives or pronounced by the judiciary. For this principle of democracy to thrive at a time we are trying to urge greater openness to democracy in other cultures, this society needs to grant breathing space for vigorous social protest. RICO chokes off such protest activity. Freedom cannot flourish with a case that imposes on protesters severe penalties under the federal racketeering laws.

What drives our basic intuition that our view is correct is as much a sense of American history from the underside as a

refined appreciation of this Court's precedents. So we turn to an account of how incompatible this litigation is with our nation's history. Real struggles in our past could have had a very different outcome if the new interpretation of the Hobbs Act and RICO had been around when these events occurred. For example, the participants in the Boston Tea Party not only *threatened property*, but actually pitched taxed tea into Boston harbor. But it was not the crime of robbery or extortion. So we don't recall it as a RICO offense, but as a political act of rebellion against taxation without representation.

The picket line and the economic boycott are tools used by organized labor to persuade owners or managers of corporations to raise wages or provide better benefits. Both picketing and boycott activity intentionally cause economic injury by diminishing the profits of the targeted company. For example, the Reuther brothers led United Auto Workers in a sit-down strike at the Ford plant in 1937. Ford called the strikers "trespassers" and had them arrested on that charge. Whatever offense may have been committed at the Ford plant, it was not the crime of robbery or extortion. So we don't recall it as a RICO offense, but as a famous effort to protect the rights of workers.

If RICO had been on the books back in the 1960s and if the lower court's reading of RICO is right, then Dr. King and the SCLC would have been vulnerable to losing their assets to their arch-segregationist racial-supremacist adversaries. All it would have taken to reach that bizarre result is for a federal judge to have viewed the "trespass" by sit-in protesters at racially segregated lunch counters as a "threat of physical violence" to the property of the Woolworth company by depriving the drugstore of revenues they otherwise would have made. But it was not the crime of robbery or extortion. So we don't recall it as a RICO offense, but as a courageous protest against Apartheid.

Rosa Parks' famous refusal to sit in the back of the bus triggered a year-long, city-wide boycott of the Montgomery

buses led by Dr. Martin Luther King, Jr., which inflicted economic injury on the city by depriving the city of revenues from their segregated buses. But it was not the crime of robbery or extortion. So we don't recail it as a RICO offense, but as one of the great instances that the People *shall overcome*. *See, e.g.*, Martin Luther King, Jr., *Stride Toward Freedom* (1963); Taylor Branch, *Parting the Waters* (1988); Howard Zinn, *A People's History of the United States: 1492—Present* 440-450 (1995).

None of these great Americans should have been forced to endure the expense of protracted litigation as defendants in a RICO action, even if it were eventually dismissed on the ground that the there was no "physical violence," whatever that might mean with respect to property (arson? malicious destruction?).

As a practical matter, moreover, the lower court's reading of the Hobbs Act is impossible for a leader of a protest movement to enforce. It is bound to happen sooner or later that a member of a loosely defined movement may do things that are not authorized by the leadership, especially in the heat of the moment, when tempers and emotions run high.

III. The court of appeals improperly perpetuated a nationwide injunction against unpopular civil protesters for a full two years after this Court had ordered the injunction vacated.

A. "The injunction must necessarily be vacated."

This Court reversed the court of appeals in 2003, noting with respect to the injunction: "Without an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." *Id.* at 411. On remand the court of appeals considered the case for a full year, and then issued an unpublished order remanding the case to the district court to determine whether four unspecified "acts or threats of physical violence to any person or property" are sufficient to support the nationwide injunction it had imposed in 1999. No. 04-1244, Pet. App. 25a-29a.

Since the parties are briefing the question of whether RICO authorizes private parties to obtain injunctive relief, we offer the Court a perspective on injunctions that comes from the considerable cumulative experience of the *amici* as social activists engaged in civil protest on many contentious and difficult issues.

First, *amici* note the *duration of the injunction*. More than two years after this Court ordered the injunction to be vacated, the injunction in this case is still ongoing. This injunction was ordered against protest activity that happened nearly twenty years ago. It has been in force for nearly six years, and if the lower court is right, it could go on until 2011, another six years. *See* No. 04-1244, Pet. App. 141a-142a. *See Carroll v. Princess Anne*, 393 U.S. 175 (1968) (reversing an *ex parte* temporary restraining order of *ten days*' duration). This Court used the adverb "necessarily" in its order to vacate the injunction, but did not add a specific chronological dimension to its order, such as "with all deliberate speed" or "instanter" or "now." It had no cause to do so in 2003, for the normal assumption would be that compliance with a mandate would be done promptly.

When the Court used the phrase "with all deliberate speed," *Brown v. Board of Education*, 349 U.S. 294, 301 (1955), it intuited that the subject of its order—racial desegregation of public schools—would take time to achieve, and it intentionally left to the district courts the task of devising desegregation plans in their region of the country. The order in the instant case, however, was not to begin to devise plans for "the dismantling of well-entrenched dual [school] systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution." *Green v. School Bd.*, 391 U.S. 430, 439 (1968). It was simply to dissolve an injunction that no longer had any legal basis. To vacate the injunction in this case does not take much time. It only takes the humility to follow a direct order from this Court. After a

decade of foot-dragging by local officials in Virginia, this Court amended the ambiguous term "with all deliberate speed" to the direct and simple term "now." *Green, id.* Now is the moment for the Court to use the same adverb in this case. The injunction should be vacated *now*.

When First Amendment rights are implicated, this Court has given explicit directions for the speed with which it expects its mandates to be complied with. *See, e.g., New York Times Co. v. United States,* 403 U.S. 713, 714 (1971) ("The judgments shall issue forthwith."); *id.* at 715 (Black, J., concurring) ("every moment's continuance of the injunctions against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment.").

Second, even if this Court had not ruled with clarity about the nationwide injunction in this case, protest activity in front of abortion clinics is now governed by the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248. *See also Scheidler II*, 537 U.S., at 411, (Ginsburg, J., concurring), No. 04-1352, Pet App. 48a. This statute was enacted because Attorney General Reno and the Attorneys General of several states took the view that no federal law—including the Hobbs Act and RICO—afforded any protection to abortion clinics under the circumstances of protests in front of clinics at the time.

Third, *amici* have considerable experience with public demonstrations of popular dissent from controversial policies. For example, Fort Benning, Georgia, houses a program called the School of the Americas, a training center for foreign military and security officials. The program has included training in the use of torture. Prominent alumni of this program have been engaged in death squads for decades. They include assassins of Archbishop Oscar Romero and of six Jesuit priests and their housekeepers in El Salvador. Each year in November a large group of Americans, including several of the *amici*, protest against this program. If demonstrators cross onto the base, they are apprehended by federal authorities, and are punished for trespassing on federal property, with prison sentences up to six months, and fines of up to $5,000. For example, in November of 2004 Sister Lil Mattingly, an elderly nun, was among those who crossed onto the base; despite her age, she received the maximum sentence of six months incarceration for daring to demonstrate against a policy hard to reconcile with fundamental decency and with this country's commitment to international humanitarian law specified in treaties and covenants to which this nation is a high contracting party. During the past fourteen years in which this demonstration has been occurring, over 180 people have been sentenced to prison, totaling 81 years in prison. These sentences seem excessive when compared with typical sentences for trespassing under state law. Imagine the impact of the decision below, if the Government could add to its arsenal against nonviolent demonstrators the full range of criminal penalties under the Hobbs Act (up to 20 years in prison), with no duty upon the Government to show that a "threat of physical violence to . . . property" was achieved *by robbery or extortion*.

Finally, the decision by the court of appeals to ignore the order of this Court to vacate the injunction in this case could embolden judges who are so minded to issue excessive injunctive relief when they should be thinking instead of preserving the fragile ability of the People to bring their government back to decency and sanity.

B. Enough is enough.

As a practical matter, there must be some finality to litigation. *Amici* are activists who may not be able to define with precision the point when finality is or should be reached. But two decades of litigation seems more than enough time for parties to be wrangling in court over the application of RICO to civil protest.

In its most recent order, the court of appeals assures the parties that it does not mean to "open Pandora's Box," but "merely resolves the final loose ends in this long-running litigation." No. 04-1244, Pet. App. 16a. But this Court al-

ready resolved all the "loose ends" of this litigation in 2003. The court of appeals has needlessly prolonged the case for two years, and has proposed a recipe for further delay by remanding to the district court to decide among various competing views on how to read the Hobbs Act. And it did so after strongly suggesting that a Hobbs Act violation can occur without robbery or extortion, a view plainly at odds with other circuits that have considered this question. *See* No. 04-1244, Pet. 18-22.

Most of the *amici* who join this brief also joined the briefs filed in the October 2001 Term. Few of the *amici* are lawyers familiar with the intricacies of distinguishing precedents and construing statutes. But all of us marveled at the ingenuity with which a lower court could, in effect, reverse this Court. *See, e.g., In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895); *Baltimore & Ohio R.R.* v. *United States*, 279 U.S. 781, 785 (1929). When asked to consider joining another brief this Term on the same matter in the same case, most of the *amici* spontaneously observed that *endless litigation eats up the meager resources of people who espouse unpopular views.*

We now say respectfully to the Court, "Enough is enough." Reaffirm the mandate announced by the Chief Justice at the end of *Scheidler II*: "Because *all* of the predicate acts supporting the jury's finding of a RICO violation must be reversed, *the judgment that petitioners violated RICO must also be reversed.* Without an underlying RICO violation, *the injunction issued by the District Court must necessarily be vacated.*" 537 U.S., at 411 (emphasis added), No. 04-1352, Pet App. 48a.

CONCLUSION

The Court should reverse the court of appeals.

Respectfully submitted,

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APPENDIX

APPENDIX A

Particular Statements of Interest of *Amici Curiae*

Communities and Voluntary Associations

Amici are voluntary associations and individuals who engage in protest activity on a wide variety of issues. Because *Consistent Life* organized the participation of these *amici* in this brief, it is listed first.

Consistent Life (CL) is a coalition of groups and individuals committed to nonviolence and respect for life. The network promotes the consistent life ethic, focusing on the connections among issues concerning human life, including war, abortion, poverty, racism, the death penalty and euthanasia. CL supports all means of nonviolent change including, but not limited to, nonviolent direct action, political and legislative action, and direct service to those suffering under these attacks on life. *Carol Crossed* (former executive director of CL), *Mary S. Rider* (former executive director), and *Ruth Enero* (former president of the Board of Directors) have frequently engaged in nonviolent civil disobedience relating to the issues listed above. All five are married women and mothers of many children. If their political opponents were to use civil RICO against them, the loss of their homes, cars, and other valuable things they own would wreak havoc upon them and their families. Ms. Rider offered a declaration before the district court in this case at the stage when it was considering the issuance of the nationwide injunction against anyone associated with the Pro-Life Abortion Network (PLAN). This declaration challenged the enormous breadth of the nationwide injunction.

Agape is a community of faith in Franklin, Louisiana, that witnesses for peace and justice through nonviolence. It engages in education of its members and the public, especially on the death penalty, through publishing booklets, brochures, and treatises on how to effect change through raising public

awareness and consciousness about issues of justice and peace.

Carolina Interfaith Task Force on Central America (CITCA) is a voluntary association of persons who believe in nonviolent direct action on issues relating to peace and justice in Central America. CITCA notes that all citizens of the United States have the right to express their views on controversial matters in a nonviolent fashion. This right is jeopardized when federal courts penalize citizens for exercising rights that are fundamental parts of the Bill of Rights.

The Catholic-Labor Network is a place for Catholics who are active in their churches and unions to learn about their Church's teachings regarding labor issues, to pray for those who are working for economic justice, and to share information about events and struggles taking place in their area.

Catholic Peace Fellowship (CPF) is a nationwide organization of Catholics committed to peacemaking in the name of Christ. CPF engages in educational projects about peace and nonviolence, and it supports those who stand for peace by virtue of conscience. For example, some of the members of CPF have engaged in nonviolent civil disobedience of laws and policies inimical to peace in today's world.

The *Catholic Worker* (CW) is a lay Catholic community founded by Dorothy Day and Peter Maurin to bear witness to the Gospel that identifies service to the hungry, the thirsty, the homeless, and the imprisoned as a way of recognizing the presence of God in categories of human need. The community provides hospitality to homeless families while working to address the root causes of homelessness. Committed to following the teachings of Christ on nonviolence, each CW house or center engages in acts of hospitality and witness to Gospel values in a variety of ways, including demonstrations against war and militarism, poverty, and abortion. The CW

houses that join this brief are: the Casa Juan Diego (Houston, Texas); Dorothy Day Catholic Worker House (Washington, D.C.); the Day House (Detroit, Michigan); Ithaca, New York Catholic Worker; the Los Angeles Catholic Worker; Mary's House (Birmingham, Alabama); Redwood City (California) Catholic Worker; St. Francis Catholic Worker Community (Columbia, Missouri); and the St. Francis and Therese Catholic Worker House (Worcester, Massachusetts).

Center for Action and Contemplation is a Christian center forwarding the integration of social action and contemplative prayer. The members of this community regularly engage in transforming society around the issues of poverty, war, and other kinds of violence.

Citizens United for Alternatives to the Death Penalty (CUADP) is a national organization that works to end the death penalty in the United States through aggressive campaigns of public education and the promotion of tactical grassroots activism. CUADP takes no position on the abortion issue. It does not endorse or support the stand of these defendants on that issue, nor does it necessarily approve of their tactics or actions. It supports the petitioners strictly as a legal matter, urging the Justices that peaceable, nonviolent direct action—that is, peaceful civil resistance which "crosses the line" and may involve sit-ins or blocking access in a manner that might be regarded as a "threat" to property rights should not be held to constitute the federal felony punished by the Hobbs Act, without any proof of robbery or extortion. Nor should a ""pattern" of such "direct action" be penalized under the federal racketeering laws.

The Conference of Major Superiors of Men serves the leadership of Catholic orders of over 25,000 vowed religious priests and brothers in the United States. The Justice and Peace Division provides a voice for these communities throughout society in witnessing against capital punishment, war, poverty, and any issue that threatens life. The civil rights

of free speech and assembly are crucial to effective action against oppression. These civil rights are threatened by the use of the federal racketeering statute against political and religious dissenters.

The Eighth Day Center for Justice is a community composed of Catholic sisters, priests, and laity who believe that nonviolent direct action is the backbone of our democracy and the core of the Christian message. For example, some of the healing actions of Jesus on the Sabbath were viewed as a violation of the Torah. Religiously motivated opposition to unjust laws has a long and admirable history, culminating in the Civil Rights Movement and the Movement for Gender Equality in this country, and in the opposition to the assault upon human life in the Nazi regime.

Embrace a Consistent Ethic participates in ongoing peaceful public witness against all forms of taking human life, including opposition to war, capital punishment, euthanasia, abortion, racism and poverty. The members of this community believe that the *NOW vs. Scheidler* litigation interferes with the ability to carry out group/individual conscientious objection, even those actions which would normally be considered within the limits of free speech.

Every Church a Peace Church (ECPC) is an association of churches that adopt nonviolent struggle as their way to pursue justice. For this reason ECPC agrees with the brief filed in this case by the Southern Christian Leadership Conference in the court of appeals that the power to impose treble damage awards upon the petitioners and to enter a nationwide injunction under RICO represents "clear and present danger to future prospects for the lawful exercise of our liberties, namely, the free exercise of religion, speech, press, or assembly and petition for redress of grievances."

The Faith Community of St. Sabina's in Chicago is a Word-based, Bible teaching church that believes in the power

of praise and worship—a spiritual hospital where all are welcome and invited to "taste and see the goodness of the Lord." The members of the Faith Community of St. Sabina's believe that the church is called to be the immune system of the world—fighting off the attacks of Satan, by both prayer and peaceable nonviolent direct action. St. Sabina's has crusaded against a host of social evils.

Franciscan Office of Justice, Peace, and the Integrity of Creation, Santa Barbara Province, practices outreach, advocacy, and education with and on behalf of the friars and those with whom they minister.

Interfaith Worker Justice (IWJ), a national nonprofit organization founded in 1996, educates, organizes and mobilizes the U. S. religious community on issues and campaigns to improve wages, benefits and working conditions for workers, especially low-wage workers. For these reasons, IWJ is concerned about the possible misuse of the federal racketeering statute (RICO) against workers in a labor organizing context.

The Leadership Conference of Women Religious (LCWR) is an association of leaders of congregations of Catholic women religious in the United States. LCWR has approximately 1000 members, who represent about 95 percent of the 75,000 women religious in the United States. Founded in 1956, the conference assists its members to collaboratively carry out their service of leadership to further the mission of the Gospel in today's world. Social justice is an integral part of LCWR's focus. LCWR members work together to create a corporate voice that amplifies the efforts of local religious congregations. Rather than solutions that temporarily assuage injustice, LCWR members strive to think strategically about systemic change.The scope of the LCWR conference concerns is broad and includes collaborating with the Catholic church and other societal efforts that influence systemic change, studying significant trends and issues within the

church and society, utilizing our corporate voice in solidarity with people who experience any form of violence or oppression, and creating and offering resource materials on leadership skills.

Nevada Desert Experience has since 1983 organized nonviolent civil disobedience at the U.S. nuclear test site in Mercury, Nevada, where tens of thousands of people—including the actor Martin Sheen—have been arrested for trespass in their public protest against weapons of mass destruction.

The Orthodox Peace Fellowship in North America is a community of Eastern Orthodox Christians committed to witnessing for peace in our world: Eastern Orthodox Christianity has for 2000 years affirmed the Sacredness of human life from conception to death. This, we understand, is the faith of Christ, the apostles, the councils, and the fathers and mothers of the Church. This we must proclaim.

Pax Christi USA is the national Catholic peace movement of 14,000 members who are committed to the gospel imperative of seeking peace through nonviolence. The members of this association promote peace through personal and social transformation. They frequently engage in nonviolent protest of policies that undermine peace and justice.

People for the Ethical Treatment of Animals (PETA), with more than 850,000 members, is the largest animal rights organization in the world. Founded in 1980, PETA is dedicated to establishing and protecting the rights of all animals. PETA operates under the simple principle that animals are not ours to eat, wear, experiment on, or use for entertainment. PETA focuses its attention on the four areas in which the largest numbers of animals suffer the most intensely for the longest periods of time: on factory farms, in laboratories, in the clothing trade, and in the entertainment industry. We also work on a variety of other issues, including the cruel killing of beavers, birds and other "pests," and the

abuse of backyard dogs. PETA works through public education, cruelty investigations, research, animal rescue, legislation, special events, celebrity involvement, and protest campaigns.

The Peter Maurin Center in Washington, D.C., was established in 1997. In the words of Peter Maurin, the center seeks to contribute to creating a "society where it is easier to be good." The Center does so in three ways: (1) evangelization in the Catholic Worker tradition through operating the Catholic Worker Bookstore; (2) carrying out the works of mercy through operating a furniture and household goods exchange, whereby people who have more than they need give it to the Center, which distributes it to needy people; and (3) organizing for peace and justice through solidarity with the people of Puerto Rico in their effort to de-colonize, and specifically to rid themselves of the Navy at Vieques; and (4) through work for the abolition of the death penalty, specifically focusing on the case of Mumia Abu-Jamal. The Center is concerned with the broad and elastic application of the RICO act to dissent and nonviolent protest. The misapplication of the law in this way permits the government to single out and criminalize movements for social change virtually at will. Affording the government power of this nature renders democratic practices timid and superficial and essentially disempowers the People in the political process. To protect popular, and especially unpopular, political expression, these effects of the RICO law need to be nullified.

Plowshares is a coalition of religious believers who seek to enflesh the words of the prophet Isaiah 2:4, "They shall beat their swords into plowshares, and their spears into pruning hooks. Nation shall not take up sword against nation and neither shall they study war anymore." The founders of this movement, Fr. Daniel Berrigan, S.J., and his deceased brother Philip Berrigan were leaders in the opposition to the Vietnam War. From burning draft files to organizing larger civil

disobedience actions, they provided the peace movement with a sharp focus. Fr. Berrigan offered a declaration before the district court in this case at the stage when the court was considering the issuance of the nationwide injunction against anyone associated with the Pro-Life Abortion Network (PLAN). This declaration addresses the severe impact on nonviolent social protest that flows from treating loose associations of antiwar protesters as though they were racketeer-influenced corrupt organizations. Fr. Berrigan joins this brief in his individual capacity, as do the following Plowshares Activists: Bruce Friedrich, Art Laffin, Paul Magno, Patrick O'Neill, and Kathy Boylan Shields. All of these activists have spent many years imprisoned for their nonviolent protest against war.

Sojourners is a Christian ministry whose mission is to proclaim and practice the biblical call to integrate spiritual renewal and social justice. In response to this call, the members of this community offer a vision for faith in public life by: publishing Sojourners magazine, and other resources that address issues of faith, politics, and culture from a biblical perspective; preaching, teaching, organizing, and public witness; nurturing community by people from the various traditions and streams of the church; hosting an annual program of voluntary service for education, ministry, and discipleship. Members of Sojourners seek to be guided in their lives and work by the biblical principles of justice, mercy, and humility.

Witnesses for Reconciliation (WFR) was formerly the Committee of Southern Churchmen that was founded in the 1960's to promote the work and vision of Dr. Martin Luther King, Jr., and to advance his cause of nonviolence. The Committee promoted, participated in, and led marches, sit-ins, boycotts, and the freedom rides. WFR continues to advance the cause of civil and political rights for minorities.

Individuals

David Atwood is the director of the Texas Coalition to Abolish the Death Penalty. This group regularly organizes demonstrations against the death penalty in Texas.

Donald Bauer is a Catholic priest who served as a member of the New York State Labor and Religion Coalition since its inception, and who worked tirelessly for farmworker wage equity and other issues on behalf of the poor. He also was appointed to the Congress on Racial Equality and in both of these capacities used public witness to educate and challenge the public.

Michael Baxter, C.S.C. is a theology professor at the University of Notre Dame, and the national president of the Catholic Peace Fellowship.

Wendell Berry is an American poet, novelist, essayist, philosopher and farmer. He has published several collection of poems, and essays about his commitment to the preservation of ecological diversity and integrity, and the renewal, on sound cultural and ecological principles, of local economies and local communities.

Abe Bonowitz is the director of Citizens United for Alternatives to the Death Penalty (CUADP), a national organization that works to end the death penalty in the United States through aggressive campaigns of public education and the promotion of tactical grassroots activism. On occasion he has engaged in peaceful acts of civil resistance. While CUADP takes no position on the abortion issue, Bonowitz is pro-choice and, therefore, he is in profound disagreement with the petitioners on that issue and deplores the violent tactics that abortion opponents have been known to employ. He does not know these petitioners and has no personal knowledge of their tactics. He is informed, though, that jurors at the trial of this case found petitioners or unidentified persons "associated with" them responsible for four acts or

threats against persons or property. He supports this appeal only because, as a legal matter, political protest involving sit-ins or blocking access should not be condemned as "extortion" or "racketeering."

Roy Bourgeois, M.M., is a Maryknoll priest who, after years as a foreign missionary in Central America, founded the School of the Americas Watch (SOAW), a loose coalition of citizens concerned about the widespread abuse of human rights—including torture and murder of religious leaders and labor leaders throughout Central and South America—by foreign military officers who study at the U.S. Army School of the Americas at Ft. Benning, Georgia. *Eric LeCompte* is the director of programming of SOAW. Each November—on the anniversary of the assassination of six Jesuit priests and their domestic workers in San Salvador by graduates of the School of the Americas—SOAW organizes a major demonstration against the negative effects of this program upon peace and justice in our hemisphere.

Bernard Broussard is the founder of the Human Relations Council of Louisiana, a group that played a leading role in community organization on behalf of the civil rights of African Americans in Louisiana in the mid 1960s. From that time to the present, he continues to challenge through marches, demonstrations, holding prayer meetings on behalf of the oppressed in the South. He is a founder of Starthrowers, a human rights organization based in Louisiana.

Will Davis Campbell is a writer, lecturer, and long time supporter of the Civil Rights Movement who helped escort African-American children when they tried to integrate a Little Rock, Arkansas high school back in 1957. A founding member of Dr. King's Southern Christian Leadership Conference, he became the Executive Director of the Committee for Southern Churchmen, which is now known as Witnesses for Reconciliation.

Thomas Cornell is the founder of the Catholic Peace Fellowship and an ordained deacon in the Catholic Church. He is the editor of *The Catholic Worker*, a newspaper of national circulation founded by Dorothy Day, and he lives at the Catholic Worker farm in Marlboro, New York.

John Dear, S.J., has written over 100 articles on peace and nonviolent action Fr. Dear's writings focus on nonviolence and peacemaking. One of his books, *Peacemaking Behind Bars*, is an account of his time spent in jail for a 1993 action at Seymour Johnson Air Force Base in Goldsboro, N.C. He has participated in many other actions of nonviolent civil disobedience for justice and peace.

Stephen Dear is the executive director of People of Faith Against the Death Penalty, a national organization with headquarters in Carrboro, North Carolina.

Heather DeMaim is a founding member of Not Dead Yet and ADAPT, a disability rights organizations in Missouri.

Jim and Shelley Douglass are co-founders of Mary House, Catholic Workers, in Birmingham, Alabama, peace activists, co-founders of Ground Zero Center for Nonviolent Action, and co-organizers of a national campaign to stop the "White Trains" transporting nuclear weapons across the U.S. and to stop the Trident nuclear submarine and missile system. The Douglasses believe that every nonviolent movement in U.S. history could have been squelched by the way in which RICO has been applied in *NOW v. Scheidler*.

Thomas Gumbleton is a Catholic bishop in the Archdiocese of Detroit, Michigan, and a founder of Pax Christi, USA. He was a leading voice urging the United States Conference of Catholic Bishops to issue its statement in 1971 collectively opposing the Vietnam War on the ground that the war could no longer be justified under the principles of the just war tradition. Bishop Gumbleton has worked and visited in poor and war-torn countries in Latin America and the Caribbean

and is deeply concerned with human rights violations around the world. He holds a deep belief in the power of nonviolence to effect social change.

Lana Jacobs has been arrested numerous times at the Strategic Air Command base in Omaha, Nebraska, and Whiteman AFB protesting the stealth bomber; has trial in September 2005 for opposing ROTC in the schools in Missouri; In March, 2005, Lana was arrested for taking water to Terri Schiavo. She is the recipient of the Martin Luther King Jr. Award and the Shalom Peace Award.

Kathy Kelly is a co-founder of Voices in the Wilderness, a group that has sought to end the economic sanctions against the people of Iraq, by sending delegations to Iraq to break the siege and to bring desperately needed medical supplies to children and families, and by sponsoring demonstrations against these sanctions, including week-long fasting outside the headquarters of the United Nations in New York. Voices in the Wilderness has also protested against the current war in Iraq. The American Friends Service Committee nominated Ms. Kelly for the Nobel Peace Prize.

Andy Lipscomb is a member of Witnesses for Reconciliation, a board member of Consistent Life, and a long-time activist for civil rights.

Deborah McEvoy is a member of Feminists for Life of America and of the Detroit Peace Community. In her role as a health professional, she supports the needs of women and their children through petitions, public advocacy and demonstrations.

Rachel MacNair, a Quaker, is the founder and director of the Feminism and Nonviolence Studies Association. She has written a seminal book on peace psychology, and has been arrested frequently for participation in nonviolent direct actions at nuclear weapons facilities and abortion clinics.

John W. Oliver is the coordinator of the Orthodox Peace Fellowship in North America. He is professor emeritus of history at Malone College.

Gail Phares is a founder of Witness for Peace (WFP) a national organization working to affect U.S. policy in Latin America. Ms. Phares is also the founder and director of the Carolina Interfaith Task Force on Central America. She has led many delegations to war-torn areas in Latin America and frequently joins nonviolent peace and justice actions at home. The members of WFP believe that organizing for justice—including the right to nonviolent protest of official policies of our government—is a fundamental right secured under the Constitution.

Rev. Michael Pfleger is Pastor of the Faith Community of St. Sabina's on Chicago's South Side, a "Pastor, Preacher, Parent, Lecturer, Activist, and 'Errand Boy for Jesus,' " who has mobilized his parish and community in a series of protest crusades, sometimes involving peaceable nonviolent direct action, including campaigns against drug paraphernalia (which precipitated statewide legislation), "Standing Up—Talking Back," a social action crusade, an anti-Alcohol & Tobacco Billboard campaign which reduced the number of such billboards from 118 to 40 in the local community, and sting operations to identify vendors selling liquor to minors. On April 27, 1998, citing the verdict in *NOW vs. Scheidler*, the Chicago Sun-Times editorialized that, if RICO weren't curtailed, that statute might even be invoked to deter or punish Fr. Pfleger's and St. Sabina's community-based protest against the trivialization of violence on the Jerry Springer TV show.

Sister Helen Prejean, CSJ, is internationally known for her opposition to the death penalty and her work with both death row inmates and the families of murder victims. She is the founder of Survive, a New Orleans victim's advocacy group, and the author of *Dead Man Walking: An Eyewitness Account*

of the Death Penalty in the United States, which became both a national and international bestseller and a major motion picture. Sister Helen does not believe that peaceful, nonviolent protesters should be condemned as "extortionists" or protest leaders prosecuted as "racketeers."

Scott and *Claire Schaeffer-Duffy* are co-founders of the Saints Francis and Therese Catholic Worker in Worcester, MA, a lay Catholic pacifist community which offers hospitality to homeless men and women. They also publish *The Catholic Radical*, a bi-monthly journal of opinion. Scott has engaged in civil disobedience at weapons facilities and abortion clinics, and has lectured extensively at colleges and universities throughout New England on the value of nonviolent direct action. The Schaeffer-Duffys state their interest in this case as follows: "Nonviolent civil disobedience is an American tradition, one that has brought much good to our country. We advocate its use when laws contradict the needs of the common good and the greater law of God's love for all."

Martin Sheen is an actor who has participated for nearly two decades in protests against weapons of mass destruction and in demonstrations pertaining to homelessness and other issues of social justice.

John Stoner is a member of Mennonite Central Committee, a traditional peace church. He is the founder of Every Church a Peace Church, a movement to share the convictions of the Anabaptist community with all other Christian churches.

Brian Terrell is a leader of the Catholic Peace Ministry in Des Moines, Iowa and is a participant with members of the Des Moines Catholic Worker community in nonviolent Gandhian activism at Offutt Air Force Base.

Howard Zinn is a professor of history at Boston University. He has served as a professor of history at Spelman College in Atlanta, and as a visiting professor at the University of Paris

and the University of Bologna. He has written over a dozen books which deal in some way with protest movements in American history. Two of these books most closely related to the theme of this brief are *Disobedience and Democracy* (1968), and *A People's History of the United States* (3d ed. 1999).

Stephen Zunes is Professor of Politics at the University of San Francisco. He is the principal editor of *Nonviolent Social Movements* (Blackwell, 1999). His research interests have included the impact of grassroots political movements on policy and government. Prior to his academic career, he engaged in nonviolent civil disobedience campaigns against nuclear power, nuclear weapons and apartheid and served as a staff member and nonviolence trainer for organizations supporting nonviolent civil disobedience.